No. 15104

United States Court of Appeals

FOR THE SIXTH CIRCUIT

National Labor Relations Board, Petitioner, vs. Oman Construction Co., Inc., Respondent.	On Motion of National Labor Relations Board for Entry of Supplemental Decree Specifying the Amount of Back Pay Due Under Court's Decree of April 22nd.

Decided November 16, 1964.

Before: Cecil and O'Sullivan, Circuit Judges, and Boyd, District Judge.

Per Curiam. This cause is before the Court on motion of the petitioner, National Labor Relations Board, for entry of a supplemental decree specifying the amount of back pay due one William Nelson, under order of this Court of April 22, 1963, enforcing the order of petitioner against the respondent, Oman Construction Co., Inc.

The response to the motion of the Board was a motion to dismiss the action for the reasons: 1. that this Court has no jurisdiction to issue a supplemental decree, and, 2. that if the Court has jurisdiction to issue a supplemental decree, the order of the Board should not be enforced because it is not supported by substantial evidence.

By opinion of this Court, under date of April 22, 1963, reported at 316 F.2d 230, enforcement of the order of the National Labor Relations Board was granted. The opinion

"directed that the involved employee be offered re-employment and made whole for lost wages, as a consequence of his layoff and respondent's refusal to reemploy him." The involved employee was Nelson. A mandate was issued to the Board on the opinion and order of this Court on May 14, 1963. Subsequently, a hearing was had before an examiner. The finding of the examiner that Nelson was entitled to an award of back wages in the amount of $4772 was approved by the Board and an order was issued to that effect. This order is now before the Court for enforcement.

The substance of the claim of counsel for the respondent on the question of jurisdiction is that, because this Court in its opinion did not specifically remand the case to the Board for the purpose of determining the amount of back wages due Nelson, the case was closed and jurisdiction was lost. Counsel claims that the employee's only relief is to bring a plenary suit against the respondent in a state court.

There is no merit to the claims of counsel for the respondent. In *National Labor Relations Board* v. *Deena Artware, Inc.*, 198 F.2d 645, this Court granted an order of enforcement similar to one in the case now before us. The Board's Supplemental Decision and Order for the payment of back wages was enforced in that case by this Court in *National Labor Relations Board* v. *Deena Artware, Incorporated*, reported at 228 F.2d 871. See also *N.L.R.B.* v. *Royal Palm Ice Co.*, 201 F.2d 667, 668, C.A. 5; *N.L.R.B.* v. *Bird Machine Co.*, 174 F.2d 404, 405-406, C.A. 1; and *Home Beneficial Life Insurance Co.* v. *N.L.R.B.*, 172 F.2d 62, 63, C.A. 4.

National Labor Relations Board v. *Deena Artware, Inc.*, 207 F.2d 798, cited by counsel for respondent is not in point.

This was an action by the Board for a temporary restraining order enjoining Deena Artware from giving effect to an assignment of a portion of a judgment in favor of Deena Artware to Deena Products Company. Other citations[1] of counsel are equally inapplicable.

Counsel did not seriously argue the question of the amount of the award of back wages. In answer to a question from the Bench, he stated that he rested his case on the jurisdictional question. We find that the award of back wages made by the Board is supported by substantial evidence and that its order should be enforced.

Enforcement of the Board's supplemental order for an allowance of back wages in the amount of $4772 is allowed.

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1. *Retail Clerk International Association* v. *Schermerhorn et al.*, 375 U.S. 96 (1964); and *N.L.R.B.* v. *Hudson Motor Car Company*, 136 F.2d 385, C.A. 6.

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1964.

OMAN CONSTRUCTION COMPANY, INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

Order Extending Time to File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled case be, and the same is hereby, extended to and including April 15th, 1965.

/s/ Potter Stewart
Associate Justice of the Supreme Court of the United States

Dated this 9th day of February, 1965.

29 U.S.C., Section 160(e) and (f)

PETITION TO COURT FOR ENFORCEMENT OF ORDER; PROCEEDINGS; REVIEW OF JUDGMENT

(e) The Board shall have power to petition any United States Court of Appeals (including the United States Court of Appeals for the District of Columbia), or if all the United States courts of appeals to which application may be made are in vacation, any United States district court, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person re-

sides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or set-

ting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 346 and 347 of Title 28.

REVIEW OF FINAL ORDER OF BOARD ON PETITION TO COURT

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.